**EAST GIPPSLAND SHIRE COUNCIL RESPONSE TO**

**SMART PLANNING REFORM:**

**REFORMING THE VICTORIA PLANNING PROVISIONS
DISCUSSION PAPER**

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## INTRODUCTION

The East Gippsland Shire (EGS) welcomes the opportunity to provide a submission to the *Smart Planning Reform: Reforming The Victoria Planning Provisions Discussion Paper.*

East Gippsland Shire is located in south-east Victoria with a population of approximately 45,000 people. It is the second largest Shire in Victoria by land area, covering 21,000 square kilometres.

East Gippsland is characterised by diverse and dispersed communities, with over 40 identifiable townships and localities, often separated by large tracts of vegetated public land or farmland. Each township or community has its own distinctive heritage, as well as its own tourist attractions and economic focus. Therefore, the East Gippsland Planning Scheme is a complex document, addressing this diversity and size.

East Gippsland Shire Council has a strong interest in reforming the planning regulations to improve their legibility, remove unnecessary complexity and ensuring the scheme supports appropriate growth and development. However, in doing so it will be important that the planning scheme recognises and continues to support diversity, local characteristics and needs – as Victoria is not homogenous.

East Gippsland Shire is one of three local governments invited to participate in the Smart Planning Digital Working Group, and participate as a pilot council for the rollout of Smart Planning's Planning Scheme Information Management System (PSIMS) project. This invitation reflects the complexity of the issues that the East Gippsland Planning Scheme needs to address.

This submission is an officer level submission that has not, given the limited time given to councils to respond to the discussion paper, been formally considered by Council

## OVERALL COMMENTS

East Gippsland is generally supportive of the concept of planning scheme reform, as it is agreed that there is a myriad of changes that need to be made to the system in order to cut red tape, make it easier to use and provide more certainty to applicants. That said, we have raised a number of concerns within this submission, with the main areas of concern being:

- It is not considered that the reforms accurately address many of the effectiveness issues raised in the Victorian Auditor General's Office (VAGO) review of the Victorian planning system. Many of this issues VAGO raised were about the complexity, repetitiveness and lack of clarity around the State planning controls – not the localised parts of planning schemes. However, this discussion paper seeks to further centralise planning into state level controls, and dilute the local policies and Municipal Strategic Statement – which were recognised in the VAGO report as being one of the areas of the planning system that was generally clear and effective. Therefore, it is recommended that the VAGO report is better reflected in the reforms proposed.

- The VAGO Report makes the observation that Council's propose most of the changes to planning schemes and make most of the decisions about what land use and development is allowed. It this very point which emphases the critical role that local government have on influencing land use decisions. The position of VAGO is that there has been insufficient measurement of the planning system's contribution to achieving planning policy objectives.

The overall desire is to simplify and rationalize planning policy, however there is no nominated criteria upon how decisions will be made as to what is considered appropriate planning policy at the local level. The VAGO Report concludes that critical to land use assessments are the concepts of net community benefit and sustainable outcomes. Where are the sections of reform which address these integral planning criteria? Therefore our expectation is that the Smart Planning review fixes the controls and performance measures so they can be readily implemented at a local level without the need for local policy interpretation. The discussion paper has not addressed this sufficiently.

- Our Council strongly rejects the proposed reform which seeks to introduce a 'Centre of Excellence' and centralise policy development. Not only is this condescending, it is at odds with broader government policy of supporting regional growth and decentralisation.

- The creation of a central business unit in DELWP is of major concern to East Gippsland Shire and many other rural councils. This recommendation centralises a large planning function, de-skills and threatens the security of regional strategic planning capacity, and carries the risk of stripping local knowledge and perspective out of the scheme. The suggestion also seems at odds with the Andrews Government's platform of supporting regional area growth and decentralisation of services into regional areas.

- The VAGO Report addresses 3 areas measuring success of the implementation of state planning policy; relating to activity centers, increased housing density, diversity and affordability and protecting valuable agricultural land.

- The VAGO Report concluded that there should be a shift in mindset from a control based approach towards a more mature outcome based consideration of all relevant factors, potential conflicting, risk factors and impacts. This is not what the Discussion paper recommends. The discussion paper is a disappointing tweak of existing controls only

- The reorganisation of planning policy into themes is likely to mean that much of the local content is lost as a result of the change – making it difficult for statutory planners to respond appropriately to local issues and conditions.

- The reduction of the MSS into a small and concise formatted document that again fails to capture adequate local content. This suggested reduction is strongly rejected by East Gippsland Shire, as we view the MSS as one of the most used and effective parts of the planning scheme. Often it is this part of the planning scheme used to assist applicants shape planning proposals so that they meet local character and enhance existing settlements'.

- The integration of VicSmart into the scheme requires considerable refinement as it is unclear how this will be undertaken, consequently making it difficult to ascertain when VicSmart applies.

- The expectation that Councils will need to review their schemes and implement their changes within a tight timeframe is of concern given the increase in workload and therefore pressure on Council's limited resources. This increased workload expectation does not seem to acknowledge that with the current Victorian government policy of rate capping, there is limited capacity for local government to increase the resources to the level required to implement such reviews without ceasing all other strategic planning activity.

The discussion paper whilst making some advances, missed many of the critical elements highlighted in the VAGO report. It is therefore felt that a more thorough and consultative process is required before the project advances. Specifically the project needs closer alignment with the VAGO report findings.

The following sections of this submission address the specific questions raised within the discussion paper:

## 1. A SIMPLER VPP STRUCTURE WITH VICSMART ASSESSMENT BUILT IN

### 1.1 Restructure and reform the particular provisions

East Gippsland Shire Council supports the restructure of the particular provisions into 4 defined categories and agrees that this will make this section of the scheme easier to navigate and clarify the intent and purpose of the various particular provisions. Council also supports any restructure that results in the reduction of the number of provisions by way of amalgamation, amendment or deletion as the current scheme has in excess of 80 provisions, some of which are outdated or could be better incorporated elsewhere within the scheme.

The appendix to the discussion paper provides greater detail on specific changes that are proposed to be considered to particular provisions and Council generally supports the proposed changes. However, we wish to make specific comments on some of the changes as follows.

#### Clause 52.03 – Specific Sites and Exclusions

It is agreed that this particular clause holds extreme powers in that it can set aside the entire scheme and lacks transparency as it is not easily located and a thorough knowledge of the scheme is required to know it exists. Therefore, an overlay, as proposed, would provide clear, immediate and transparent information about a specific site and would show up in any planning property searches. *East Gippsland Shire supports this proposed change.*

#### Clause 52.06 – Car Parking

It is agreed that the land use and associated car parking rates within clause 52.06 are outdated and incomplete which leads to uncertainty for applicants and decision makers. It is also agreed that in some cases car parking exemptions and no notice and review are appropriate, especially if a more code-based system is going to be implemented that seeks to streamline 'simple' applications.

Whist we generally support the proposed changes, there is some concern around how these changes will affect existing Parking Overlays that are vastly based upon the current, albeit outdated, land uses and parking rates. The risk is that the overlay schedules also become outdated and Council is then forced into a review and planning scheme amendment process which is a huge drain on resources. *East Gippsland Shire supports this proposed change subject to comments made above.*

#### Clause 52.10 – Uses with Adverse Amenity Potential

The table at Clause 52(10) requires complete review. This should include reference to reverse amenity buffers and clear interpretation of thresholds and uses.

***Clause 52.27 – Licensed Premises***
The planning permit process and application process required by the Victorian Commission for Gambling and Liquor Regulation is certainly a 'doubling-up' of processes and increases time and money spent by the applicant. Any measures to streamline this process and avoid any 'double-up' is supported, we however caution that Council still needs to play a role in assessing the social and community impacts. Furthermore, the idea of exempting land within a particular zone is a good one and provides a more streamlined approach for small business however there needs to be some consideration of scale in the decision making process and therefore not all uses may be appropriate for exemption. *East Gippsland Shire supports this proposed change subject to comments above.*

***Clause 52.28 – Gaming***
The planning permit process and application process required by the Victorian Commission for Gambling and Liquor Regulation are duplicate processes where the benefit is questionable. However, gambling raises a range of social and community issues, especially in high risk communities and therefore Council still needs to play a role in assessing the social and community impacts and is somewhat reluctant to support change in this area without further study and investigation undertaken in consultation with key stakeholders and decision makers. *East Gippsland Shire does not support this change as part of this reform.*

***Clause 52.29 – Land Adjacent to a Road Zone Category 1 or a Public Acquisition Overlay for a Category 1 Road***
As detailed within the discussion paper, this clause often causes confusion and inconsistent decision making. Any changes that would make the clause clearer, provide standard conditions and exemptions would be welcomed by Council. *East Gippsland Shire supports this proposed change.*

***Clause 52.37 – Post Boxes and Dry Stone Walls***
We agree that this clause and where it applies is ambiguous and therefore wholly supports mapping and management through the Heritage Overlay. *East Gippsland Shire supports this proposed change.*

***Clauses 54, 55, 56 and 58 – Residential development and subdivision provisions***
Clauses 54, 55, 56 and 58 have historically worked well in providing clear objectives and standards that developments need to meet and have also provided applicants a clear framework to respond to. That said, we agree that there are some points of confusion that require clarification to ensure clearer decision making for Councils, VCAT and the community. *East Gippsland Shire supports this proposed change.*

**1.2     Integrate VicSmart into appropriate particular provisions and overlay schedules**
Currently VicSmart sits within its own section of the planning scheme which has the benefit of it being easily defined within the scheme and therefore easily found. We agree that there is some merit in integrating VicSmart into the planning scheme and creating simple assessment pathways as this will streamline the scheme and application process. However, it is not clear in the discussion paper how VicSmart will be integrated into the planning scheme and there is a concern that it will make

VicSmart difficult to find within the planning scheme and thus make it harder for applicants and planners to work out if VicSmart applies.

**1.3    Consolidate all administrative provisions**
The proposed move to consolidate all administrative and operational provisions into one location appears reasonable and would have the effect of increasing the useability of the planning scheme. *East Gippsland Shire supports this proposed change.*

**TELL US MORE**

**What other changes to the VPP structure do you think should be considered?**
Local Policy requires repositioning to give much greater strength and the MSS needs to stay. Please also see our earlier preamble comments as it is felt that there is a need to address some of the more fundamental issues with the reform before structure is examined.

## 2.    AN INTEGRATED PLANNING POLICY FRAMEWORK

**2.1    Integrate state, regional and local planning policy**
It is evident that the intent of integrating state and local policies into the 'Planning Policy Framework' is to streamline the system, increase useability, increase consistency and maintain an up to date policy system.  Whilst we support the intent of this proposed change, we have the following concerns about the change.

*3 Tiers of Policy*
Whilst the Smart planning reform is trying to streamline and consolidate the scheme, an additional tier of policy in the form of regional policy is being added which appears contrary to the intent of the entire reform.

*Themes*
Grouping by themes has some merit as it provides a logical framework, increases useability and user understanding.  However, it is of some concern that all policy must 'fit' within a certain theme as themes may be too restrictive, become outdated or cause elements of policy to be lost or fragmented by trying to fit within a theme. It therefore limits the ability to respond to local issues and needs.

*Local Policy*
Local policy has the purpose of providing strategic policy that is specific to a place, a site or a localised issue.  The idea that all local policy will somehow fall under a state specified theme or need to be amended to 'fit' will have a detrimental effect on the decision making associated with that place.

Furthermore, by stripping back local policy and mandating that it must be state derived and fit within a state theme forces the standardisation and centralisation of the planning scheme with little localised focus.

Whilst the discussion paper states that local policy will still form part of the planning scheme, the proposed structure and parameters will certainly lead to less local content and this is something that council is unable to support.

Finally, we note that the discussion paper states that existing local planning policies would need to be reviewed and appropriately redistributed under the relevant policy themes. Whilst this is an important part of the finalisation of the process and should be undertaken by each municipality given their intimate knowledge of their scheme, this is a huge increase in workload for our small team and we would expect support for this to occur.

*As many of these recommendations also seem at odds with the VAGO findings East Gippsland Shire does not support the recommendations as they stand and request that this section of the proposed reform is reviewed with extensive consultation with local government.*

### 2.2 Simplify the Municipal Strategic Statement

The discussion paper seeks to refine the MSS into a more concise format that defines the 'municipal context and vision'. Existing content that does not fit into this concise format would then need to be absorbed into the new Planning Policy Framework or into other areas of the scheme.

East Gippsland Shire is extremely concerned that this approach of stripping down the MSS will mean that it no longer carries much strategic weight and can no longer be relied upon in the decision-making process. Often the MSS is the tool that decision makers can use to refuse or modify an application that complies but does not contribute to the strategic direction of that place. Without a robust MSS, decisions become less localised and a state approach of 'one size fits all' will be how decisions are made.

*Again as this direction also seems at odds with the VAGO findings East Gippsland Shire does not support the recommendations as they stand and request that this section of the proposed reform is reviewed with extensive consultation with local government.*

### 2.3 Expand policy themes

The idea of organising policy into themes is supported as it makes for a more user friendly system that is easy to navigate. We also support the inclusion of a wider range of contemporary themes such as climate change and affordable housing as these are important issues facing Victoria that need to be partly addressed through the planning scheme.

We have concern that the themes will be too restrictive or cause existing local policies to be fragmented to fit into the new theme structure. This should be considered carefully by the Smart Planning group as again; this could lead to stripped down planning schemes with little localised content.

*East Gippsland Shire does not support this direction without further review*

### 2.4 Create a clearer and simpler structure for policy making

The discussion paper proposes to revise and standardise the headings contained within the planning policy framework. This is generally supported as it will ensure easier navigation and a more logical expression of a policy.

### 2.5 Set new rules and guidelines for writing policy

Despite having templates and practice notes, there have been no rules or firm guidelines available to assist planners to draft policy in a consistent manner. *Therefore, we support any reform that provides planners with the right tools and skill set to produce high quality and consistent policy.*

**TELL US MORE**

**Are there any themes that should be added to the proposed PPF thematic framework to ensure that it covers all required policies?**
Place or localised geographic areas will be an important theme for the East Gippsland Planning Scheme as many of our existing local policies are place or site based and our MSS is organised into place which is due to not only the size of our municipality but also the varied places within our shire.  Furthermore, we are moving towards place based planning across the organisation and so our MSS and local planning policy needs to be able to accord with this.

*We therefore strongly request that more consideration is given to ensuring that the reforms allow for localised policies – especially for municipalities with many local towns and settlements.*

**What else could be done to make planning policy easier to apply and understand?**
See our earlier comments about the need for greater clarity in the VPP; reconciling inconsistencies and aligning to performance measures.

**What will be needed to support transition to a new PPF format?**
The final phase of transitioning the PPF into the new format will be an enormous and resource intensive task, especially for a Shire like East Gippsland with a small planning team.  It is predicted that this transition would be a full time task for a staff member with additional support required from other staff.  *Therefore, the expectation is that councils would need to receive additional resources from the Victorian Government to undertake this task.*

There is also a question around public notification and whether these changes will trigger the need for widespread public notification.  If this is the case, there will be costs associated with the notification process as well as the demand on a staff member to manage the process and deal with enquires.  *So again, the expectation is that financial support will be provided to enable councils to manage this process and 'business as usual' effectively.*

## 3.   ASSESSMENT PATHWAYS FOR SIMPLE PROPOSALS

### 3.1   Embed a VicSmart assessment pathway in appropriate particular provisions and overlay schedules
As previously discussed in this response, there are clear benefits in integrating VicSmart into the planning scheme however council is concerned that this may make VicSmart difficult to locate within the scheme which could lead to confusion about whether an application is VicSmart compliant or not.  *The success of this change will be contingent upon how the particular provisions and overlay provisions are reorganised.*

**3.2** **Introduce new code-based assessment provisions for simple proposals to support small business, industry and homeowners**
Any change that supports small business, industry and homeowners through streamlined processes is supported. Code-based assessments already form part of planning schemes in NSW, WA and QLD and have proven to work well in reducing red tape for simple proposals. Furthermore, the idea that other processes such as food handling permits could be combined into the one process thus providing a 'one stop shop' for applicants is exciting and something that East Gippsland Shire hopes is pursued.

Finally, the issue of standard planning permits for code based assessments is supported subject to the planning scheme being clear about what happens to applications that do not meet the code based assessment.

**TELL US MORE**

**What other matters do you think are suitable for code-based assessment?**
Many of the sub-categories in 'shop' such as hairdresser, beauty parlour and standard retail would be suitable for code-based assessment.

**4.** **SMARTER PLANNING SCHEME DRAFTING**

**4.1** **Create a new VPP user manual**
The creation of a VPP user manual is considered to be a positive step in creating a streamlined and consistent planning scheme and is something that has been missing from the system. A manual that can build upon templates and practice notes and provide a digitised platform will assist all planners across the state to draft and implement a planning scheme that is easily used and understood.

**4.2** **Establish a business unit dedicated to VPP and planning scheme amendment drafting**
It is agreed that there is a need for a department at state level that is 'the keeper' of the planning scheme to ensure that:
- The scheme, especially state provisions, remain current and up to date
- The user manual remains up to date and relevant
- The system is regularly reviewed and maintained
- The digital platform stays up to date with technological advances to provide accessibility to all

It is also agreed that there is a role for the state government to play in performing a 'reviewing' function of proposed planning scheme amendments to ensure ongoing compliance with the business rules and to avoid the unruly scheme that we have today.

East Gippsland Shire **does not** support the creation of a 'centre of excellence' who's primary function is to draft planning policy and controls on behalf of municipalities. This is not supported for the following reasons:
- This approach centralises strategic planning and therefore centralises job opportunities, taking them away from regional areas. This is contrary to the Andrew's government's current policy platform of decentralisation and promotion of regional Victoria.
- This proposal will de-skill local planning capacity

- Most significantly this proposal will reduce the use of local knowledge and experience in drafting appropriate policy for local areas. It will threaten the inclusion of relevant and effective local content which is derived from local knowledge; experience with local planning matters through structure planning and other planning activity; community feedback and local issues.

### 4.3 Create an online Victorian planning library

The reform to create an online Victorian library inclusive of incorporated documents, approved development plans, reference documents and heritage citations would be a great addition to the planning scheme system. Obviously, it would lead to a more user friendly system for all and allow the documents to remain current and up to date.

**TELL US MORE**

**What are the key matters you think a VPP user manual should include?**
The user manual should pull together all existing resources such as templates, process, definitions and practice notes but also provide further guidance and prompts about drafting effective policy and examples to demonstrate the intent of each heading and control.

**What planning documents or information do you think should be included in a Victorian Planning Library?**
The list provided appears to cover most of the usual documents that are linked with the planning scheme.

**Are there other ways the drafting and consistency of planning scheme provisions can be improved?**
The need for consistency in planning schemes is questioned, as Victoria is not homogenous and the planning needs of one area are not replicated exactly in other locations. The suggested guidelines and templates will assist with consistency in how the schemes are formatted and presented – but content can't always be consistent.

## 5. IMPROVE SPECIFIC PROVISIONS

### 5.1 Improvements to specific provisions

East Gippsland Shire supports the improvements to specific provisions and in particular the amalgamation of zones and overlays to reduce repetition and the reduction in referral requirements where possible.

The appendix to the discussion paper provides greater detail on specific changes that are proposed and we generally support the proposed changes.

However, specific comments on some of the changes are made as follow:

**All Overlays – Review the approach of using overlays to identify buffers such as the Environmental Significance Overlay and examine how the VPP can**

**transparently and consistently identify and protect significant sites requiring buffers.**

The use of overlays rather than a policy based approach often brings with it complexity, confusion and errors. It would have been expected that the need for such extensive use of overlays within the planning scheme would have been examined with much more vigour and intensity during this stage of the review process. Other areas of Australis don't rely as heavily on overlays as the Victorian system does, and this should have been addressed more in the discussion paper.

**Heritage Overlay**

East Gippsland Shire strongly supports any improvement that results in the addition of exemptions for minor works which do not affect the heritage values as this will cut red tape and avoid unnecessary permit processes.

**Development Plan Overlay**

We support a review of the notice and review provision within Clause 43.04 to reduce confusion however, our position is that the scheme should provide more clarification around how non-compliant planning applications are processed when a development plan has been approved.

**Inundation Overlays**

We do **not** support the possible amalgamation of the three inundation overlays to reduce duplication, as each overlay as quite different thresholds and decision criteria. There also needs to be further advancement of the review and updating of technical mapping and alignment with other legislative processes. For example, the flood mapping under the Water Act (1989) should lead to automatic updates of the planning scheme and not require to go through unproductive exhibition processes that merely raise community expectations of change.

**Risk Mapping**

The planning system seems to be a 'catch-all' for other agencies to transpose their risks into the planning system. This leaves the planning system often unable to review or update these parts of the scheme as the expertise and knowledge lies elsewhere. It also expects local planning officers to become experts in the assessment of many technical risks and issues, without the necessary resourcing or training to do so.

5.2 **Update the Definitions section of the VPP**

East Gippsland Shire strongly supports an update of the definitions section of the VPP to include everyday terms, revised terms to match contemporary uses, broadened terms and define undefined terms.  This update is long overdue and any change of this nature will increase the useability of the planning scheme.

5.3 **Regularly review and monitor the VPP**

We support a register that maps reforms, provides timelines and enables VCAT and Planning Panels to contribute to this review process.